

TENNESSEE REGULATORY AUTHORITY

Sara Kyle, Chairman
Lynn Greer, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

MEMORANDUM

TO: Chairman Sara Kyle
Director Lynn Greer
Director Melvin Malone

FROM: Eddie Roberson, Chief, Consumer Services Division
Ed Mimms, Manager, Do Not Call Program
Lynn Questell, Counsel

DATE: December 14, 2001

SUBJECT: Settlement with Resthaven Memorial Gardens, Inc. (Docket No. 01-00903)

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and Resthaven Memorial Gardens, Inc. (referred to hereafter as "Resthaven") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA § 65-4-401 *et seq.* Resthaven registered with the Tennessee Regulatory Authority ("Authority") as a solicitor on October 12, 2001.

One (1) complaint has been registered against Resthaven with the Authority alleging that the company violated TCA § 65-4-401 *et seq.* At the time of the complaint, Resthaven was not registered with the Authority as a solicitor. This Settlement requires the company to make a payment of \$2,000 to the Authority along with assurances from the company that it will fully comply with applicable state law. The terms of this Settlement require the company to pay the \$2,000 in two equal payments.¹ The first payment is due on the day the Authority approves the Settlement with the balance due no later than the first business day of the next month that is thirty (30) days after the first payment. A representative of Resthaven will be available at the January 8, 2002 Conference to answer any questions you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against Resthaven. Staff submits the attached Settlement Agreement for your deliberation at the January 8, 2002 Authority Conference.

cc: David Waddell, Executive Secretary
Richard Collier, General Counsel
Milton Marshall, Resthaven
Fletcher W. Long, Counsel for Resthaven

¹ Resthaven submitted the payment of \$1,000 along with the signed Settlement Agreement. The check will not be processed until the Settlement is voted on by the directors. The check will be returned to Resthaven if the Settlement is not approved. Thus the statement stamped on the Settlement Agreement indicating that the debt was "paid" is erroneous.

POSTED
12/17/01

THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.
CODE ANN. §65-4-401 *et seq.*, DO-NOT-
CALL SALES SOLICITATION LAW,
AND RULES OF TENNESSEE
REGULATORY AUTHORITY, CHAPTER
1220-4-11, BY:

RESTHAVEN MEMORIAL GARDENS,
INC.

DOCKET NO. 01-00903

DO-NOT-CALL T01-00376
PROGRAM
FILE NUMBER

PAID T.R.A.

Chk # 25473
Amount 1,000.00
Rcvd By SC
Date 12/11/01

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Resthaven Memorial Gardens, Inc. ("Resthaven") and is subject to the approval of the Directors of the TRA. Resthaven, a company employing approximately twenty (20) workers, is located in Clarksville, Tennessee.

This Settlement Agreement pertains to a complaint received by the CSD alleging that Resthaven violated the Tennessee Do-Not-Call Telephone Sales Solicitation law, TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), by knowingly making or causing to be made telephone sales solicitation calls to a residential subscriber in this state who had given timely and proper notice to the TRA of their objection to receiving telephone solicitations. A complaint filed with the CSD on June 18,

2001 alleges that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Resthaven on June 12, 2001. The CSD provided Resthaven with notice of this complaint on June 18, 2001.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Resthaven in this proceeding is four thousand dollars (\$4,000). CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations, which resulted in this agreement, including Resthaven's size, financial status, good faith, and the gravity of the violation.

In an effort to resolve this matter, represented by the file number above, CSD and Resthaven agree to settle this complaint based upon the following acknowledgements and terms subject to approval by the Directors of the TRA:

1. Resthaven admits that the complaint against it is a true and valid complaint and in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Resthaven registered with the TRA as a telephone solicitor on October 12, 2001 and receives a monthly copy of the Do-Not-Call Register.
3. After receiving notice of the complaint that is the subject of this agreement, Resthaven acted in a very cooperative manner by contacting CSD and expressing an interest in settling the complaint. Resthaven and its counsel met with CSD staff and proposed

methods for preventing future violations of TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).

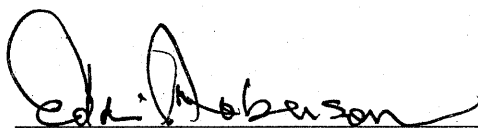
4. Resthaven agrees to a settlement payment of two thousand dollars (\$2,000.00) for this complaint as authorized by TENN. CODE ANN. §65-4-405(f), and agrees to remit the amount of one thousand dollars (\$1,000.00) to the TRA Office of the Executive Secretary on the day the Directors of the TRA approve this Settlement Agreement. The remaining installment of one thousand dollars (\$1,000.00) shall be remitted no later than the first business day of the next month that is thirty (30) days after the first payment.¹ Upon payment of the amount of two thousand dollars (\$2,000.00) in compliance with the terms and conditions of this Settlement Agreement, Resthaven is excused from further proceedings in this matter.
5. Resthaven agrees to comply with all provisions of The Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. Although the company voluntarily subscribes to the TRA's Do-Not-Call Register and has in place policies and procedures designed to prevent calls to Tennessee residents, Resthaven on its own accord, has instituted additional procedures to further minimize the potential for telephone solicitation calls to Tennessee consumers whose residential telephone numbers are registered on the Tennessee Do-Not-Call Register.

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 01-00903.

6. Resthaven agrees that a company representative will attend the Authority Conference at which time the Directors consider this Settlement Agreement.

7. In the event of any failure on the part of Resthaven to comply with the terms and conditions of this agreement, the Authority reserves the right to re-open this docket.

Any costs incurred in enforcing the Settlement Agreement shall be paid by Resthaven.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

12-13-01
Date

*Milton Marshall by permission
Hutch A. Long, atty.*

Signature

Milton Marshall

Print Name

President

Print Title

Resthaven Memorial Gardens, Inc.

12-6-01
Date